

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES H. SMITH

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:11CV147-RHW

JOE GARCIA et al

DEFENDANTS

ORDER GRANTING MOTION TO DISMISS

Before the Court is Defendants' [37] Motion to Dismiss. Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a 42 U.S.C. § 1983 prisoner civil rights complaint on April 4, 2011, in which he alleged excessive force and inadequate medical care resulting from an incident that occurred on or about December 10, 2010. On September 13, 2011, the Court conducted a screening hearing pursuant to 28 U.S.C. § 1915A. At that time, the Court set a discovery deadline of January 12, 2012, and a deadline for dispositive motions of January 26, 2012. The parties consented to jurisdiction before the undersigned. The Court later extended the discovery deadline to April 12, 2012, and the dispositive motion deadline to April 26, 2012.

On February 2, 2012, the Court granted Defendants [34] motion to compel discovery responses based on Plaintiff's failure to serve discovery response and his failure to file a response in opposition to the motion to compel. The Court set a deadline of February 24, 2012, for Plaintiff to serve discovery and to provide Defendants with dates that he would be available for a deposition. The Court cautioned Plaintiff that "failure to respond to discovery may result in the dismissal of his lawsuit for failure to prosecute."

On March 8, 2012, Defendants filed the instant [37] motion to dismiss, or in the alternative, to have the first set of requests for admissions deemed admitted. In support of their

motion, Defendants argue that Plaintiff has failed to comply with the Court's order compelling discovery responses. They argue that Plaintiff has not provided any discovery responses, nor has he provided information regarding his availability for deposition. Plaintiff's response to the motion to dismiss was due on March 26, 2012. The response is now overdue by more than two weeks.

Based on Plaintiff's failure to comply with the Court's order compelling discovery, his failure to participate in meaningful discovery, and his failure to file any response to the motion to dismiss, the Court concludes that Plaintiff has abandoned his lawsuit. Thus, the Court finds that the motion to dismiss should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that the [37] Motion to Dismiss is GRANTED and that Plaintiff's 42 U.S.C. § 1983 complaint is dismissed without prejudice as to all claims and all parties.

SO ORDERED, this the 10th day of April, 2012.

s/ Robert H. Walker
UNITED STATES MAGISTRATE JUDGE